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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 245 53491 Office: CALIFORNIA SERVICE CENTER Date: JAN 17 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 CFR 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 CFR 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a gymnastics school that seeks to employ the beneficiary as a gymnastics coach. Anna Margulis, vice president of the petitioning facility, describes the school and the beneficiary's role there:

> [The petitioner] offers professional gymnastics and acrobatics instruction to children and youths at all levels from beginners through advanced levels. [The petitioner] also offers a non-competitive program for individuals of all ages. [The petitioner] offers classes based on the Junior Olympic Progressive Level System. For example,

> the U.S. Gymnastics Federation Junior Olympic development program for women is divided into four major segments: (1) Developmental Levels 1-4, (2) Compulsory Exercises Levels 5-7, (3) Optional Levels 7-9, and (4) Combined Compulsory/Optional Level 10. Students are placed in our programs based on age and skill level and move through the programs in a linear fashion.
>
> [The petitioner] provides coaching to gymnastics teams engaged in competition at the state, regional, and national level. . . . Many of our students have achieved recognition in competitive events.
>
> **Position.** [The petitioner] is offering [the beneficiary] employment as its Women's Team Coach and Coach-Choreographer, Compulsory and Optional Programs, and Head Coach for Levels 2-4. Her job duties include: (1) teaching gymnastics classes for students at the beginner to advanced levels; (2) coaching individual gymnasts and the Women's Team and preparing them for competition; and (3) choreographing gymnastics routines for the Compulsory and Optional Programs.

The petitioner describes the beneficiary as "a former gymnast," whose prime competitive years were in the late 1970s and early 1980s. The beneficiary, 33 years old at the time of filing, does not seek admission in order to continue competing as a gymnast. Thus, any acclaim that the beneficiary had once earned as a gymnast is relevant only to the extent that such acclaim has continued uninterrupted into her coaching career. The "extraordinary ability" visa classification exists not to reward aliens for past achievements in activities in which they no longer participate, but rather to benefit the United States by securing the services of aliens who are still active in occupations in which they have earned sustained acclaim through their extraordinary ability.

The regulation at 8 CFR 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Counsel states that the beneficiary received "the USSR Master of Sports award in 1980" and won "national and international championships in artistic gymnastics." A certificate in the record indicates that the Committee of Physical Culture and Sports of the USSR indicates that the beneficiary "was awarded the title of *Master of Sports of the U.S.S.R. in Artistic Gymnastics*" in October 1980, when the beneficiary was 13 years old. The record does not contain any explanatory documentation from the awarding committee or any former official thereof, nor did the petitioner originally submit any objective materials to indicate how rare, or how common, the title was in the former Soviet Union. The certificate showing the title appears to be essentially an identification card. The beneficiary won several championships in the late 1970s and early

1980s, many of which were labeled "junior" championships. These championships are documented by what appear to be typewritten certificates. Some of these documents specify that the competitions were national, but most do not. The record does not fully establish the level and significance of these competitions. Furthermore, because the beneficiary is no longer a competitive athlete, prizes that the petitioner won over 20 years ago cannot suffice to establish a pattern of sustained acclaim.

Counsel states "[g]iven the prominence of Soviet and Ukrainian gymnastics in international competitions . . . , [the beneficiary's] awards in gymnastics competitions and the Master of Sport from the USSR at age 13 constitute a one time achievement, *i.e.*, major, internationally recognized awards for [the beneficiary's] achievements." Counsel's argument is not persuasive. The awards that the beneficiary received were available only to gymnasts in the Soviet Union (of which Ukraine was then a constituent republic), and thus were at best only national awards. Also, the "one time achievement" clause must be interpreted extremely narrowly. The petitioner has not shown that the beneficiary's awards enjoy the same immediate international recognition as Olympic medals (which are attained through international, rather than national, competition).

Furthermore, the very term "one-time achievement" implies the rarity of the occasion. In any given year, there are numerous gymnastic competitions at the local, regional, national and international levels. Every competition, by definition, will produce winners. The Service's creation of a lesser criterion for national and international awards demonstrates that the Service distinguishes between most national and international awards and major, internationally recognized awards. Finally, the beneficiary is no longer a competitive gymnast in her own right. If the beneficiary seeks admission based on a one-time achievement, then it is not unreasonable to require that the beneficiary continue to engage in the actual activity that resulted in that achievement.

Counsel asserts that the beneficiary's abilities are also "reflected in the achievements of those she has coached," going so far as to say that the success of the beneficiary's pupils "also constitutes a one time achievement." Awards received by the beneficiary's pupils certainly have weight in this proceeding, but even if one of those pupils won an Olympic gold medal (a claim the petitioner does not make), the bulk of the credit would go to the actual gymnast who won the medal. While that gymnast may have benefited from skilled training, it is the athlete's own talent that ultimately determines the outcome of the competition. We reject the assertion that a medal won by a pupil is an internationally recognized award for the coach of that pupil.

We acknowledge that the success of one's pupils is a significant indicator of one's own success as a coach, but again one must consider the level at which one coaches. Several witnesses have indicated that the beneficiary participated in the training of two Junior European Champions. Some of these same witnesses, however, have coached champion athletes at levels above the "junior" level, including even Olympic champions. These witnesses occupy top positions in the field, such as head coach of a national team and head gymnastics coach at the US Olympic Training Center. As such, these witnesses appear to occupy ranks that are demonstrably higher than the level that the beneficiary herself has reached as a coach.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that, when competing as a gymnast in her own right, the beneficiary was a member of the Soviet Army Gymnastics Team, the Soviet Junior Gymnastics Team and the Ukraine National Gymnastics Team. Counsel states that, because one must meet the highest standards of skill and achievement to qualify for membership in these teams, the beneficiary has offered comparable evidence to satisfy this criterion. The petitioner has not established that the standards needed to compete on these teams is comparable to those of an Olympic team, which arguably represents the top of the field in competitive gymnastics. Also, given that the beneficiary's association with these teams predates, by several years, her work as a coach, we cannot conclude that these memberships are any reflection on the beneficiary's acclaim or demonstrated ability as a coach.

The only membership that the beneficiary holds as a coach, rather than as a competitive athlete, is what counsel describes as the beneficiary's "Professional Membership with USA Gymnastics, which is the sole national governing body for gymnastics in the United States." The petitioner has not established that USA Gymnastics requires outstanding achievements of its members.

The petitioner has submitted a letter from Becky Riti, international relations coordinator for USA Gymnastics. Ms. Riti states that the beneficiary "is known as a former gymnast and coach at the national level of the Ukraine" but does not elaborate upon the beneficiary's work in that country. Regarding the beneficiary's work in the US, Ms. Riti states that the beneficiary "has been meeting with success in this endeavor," and has trained gymnasts who have competed "in local competitions, zone championships and the USA Gymnastics California State Championships." Ms. Riti does not indicate that the beneficiary's students have competed, let alone won, beyond the state level. Ms. Riti acknowledges the beneficiary's own history as a competitive athlete, and her certification as a level 5/6 judge, and concludes her letter with the assertion that there is a shortage of gymnastics coaches in the United States. The issue of a shortage or surplus of coaches does not address the fundamental requirement for the immigrant classification sought, which is sustained national or international acclaim. Ms. Riti does not indicate where the beneficiary stands in relation to other US gymnastics coaches. Because the beneficiary is now coaching in the United States (and had been doing so for nearly two years as of the petition's May 2001 filing date), it is entirely appropriate to judge the beneficiary by the standards of the top gymnastics coaches now working in the United States. Whatever recognition the beneficiary may have earned in Ukraine, if such acclaim did not follow her to the United States (or was not quickly re-established after her arrival), then that acclaim is not sustained.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits copies of three newspaper articles which counsel describes as "accounts of her competition performance in various Soviet and Ukrainian publications." The articles are all from March 1979 when the beneficiary was eleven years old. Three articles published during the same month do not establish a pattern of sustained coverage. The record does not show that the beneficiary has earned any media coverage as a coach (as has, for instance, Bela Karolyi).

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Counsel asserts that the petitioner has acted as a "judge of gymnastics competitions in the Soviet Union, Ukraine, and the United States." A certificate indicates that the beneficiary "was awarded 'Judge of the National Category'" in May 1997, and documentation from the Sports Club of the Soviet Army lists events where the beneficiary served as a judge between January 1998 and March 1998. Some of these competitions are labeled "international competition," but all of the competitions so labeled occurred before the beneficiary earned the title "Judge of the National Category," making the significance of the title unclear. Many of the competitions were junior championships.

Counsel adds that the beneficiary "has also qualified as a Judge for Levels 5/6 gymnastics competitions in the United States." The certification submitted to support this claim shows only that the beneficiary is qualified to judge such competitions; it does not demonstrate that the beneficiary actually has acted as a judge in that capacity in the United States. Also, given the petitioner's assertion that gymnasts compete at ten hierarchical levels, the beneficiary's certification to judge at levels 5 and 6 does not indicate that the beneficiary has acted as a judge at the highest levels of the sport. The beneficiary's certification as a level 5/6 judge is consistent with past judging activity at the "junior" level.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Counsel states that the beneficiary has coached "gymnasts at organizations with distinguished reputations, including elite level sports schools and the Junior Ukraine Gymnastics Team." The petitioner submits no documentation from the schools themselves to clarify the beneficiary's role at these institutions. Rather, the petitioner submits letters from individuals who have supervised or worked alongside the beneficiary in various capacities.

Some of the letters in the record offer little more than confirmation that the beneficiary has held various coaching positions. The letters do not indicate that the beneficiary held leading or critical roles at the various athletic schools where she taught. Given that the basic purpose of an athletic school is to provide athletic training, we cannot find that everyone engaged in providing such training at such a school performs in a leading or critical role for the school. Such a finding would apply broadly to the entire faculty of the school. We note that many of the letter writers have earned honors that the beneficiary has not, and have held positions higher than any claimed by the beneficiary.

Counsel states that the beneficiary has also played a critical role for USA Gymnastics since her 1999 arrival in the United States. The record contains no persuasive evidence to support this claim. The beneficiary has indeed enjoyed some success as a coach in the US, and has done so as a member of USA Gymnastics, but it does not follow that her work is critical to the national organization or that her activities have had more of an impact on USA Gymnastics than the work of countless other gymnastics coaches in the United States. The record contains nothing to show that the beneficiary has ever acted on a national level on behalf of USA Gymnastics.

Counsel asserts that the distinguished reputation of the petitioning school is evident from the background of the school's coaches. The fact that the coaches were already accomplished at the time they began working for the petitioner does not necessarily translate into a distinguished reputation for the school as a whole. The petitioner has not shown that the petitioning school has, as an institution, achieved national or international distinction through (for example) mass media coverage, a disproportionately high number of championships won by its students, and so on. The record contains several newspaper articles about the petitioning school, but all of these articles derive from what appear to be local newspapers rather than national or international publications.

The director informed the petitioner that the initial submission was not sufficient to establish eligibility, and instructed the petitioner to submit additional evidence. In response, the petitioner disputes the director's finding and submits additional evidence. The petitioner claims to have satisfied two further criteria not mentioned in the initial filing:

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Counsel notes that several individuals have indicated that the beneficiary, as a gymnast, performed "unique," "difficult" and "complicated" routines. Counsel asserts that some of the elements that the beneficiary performed "are considered very difficult and earn the competitor who does them extra points in competition." While the beneficiary's mastering of difficult maneuvers is praiseworthy, there is no evidence that the beneficiary invented these moves or modified them to the extent that she effectively created new ones. The very fact that the International Gymnastics Federation's *Code of Points* assigns point values to these moves shows that the moves were known to the federation. Because complexity, variety and originality are worth extra points in competition, many gymnasts strive to include those attributes in their routines. The petitioner has not shown that the beneficiary's gymnastic routines have resonated throughout the sport as being more significant or important than the routines of almost all other competitive gymnasts.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Counsel cites letters indicating that, while a student at the Olympic Reserve School, the beneficiary received "extra money for food, medical care and spending." A scholarship stipend is not a salary or remuneration for services, nor is study a field of endeavor, even at a specialized school. When the beneficiary was later an instructor at the same school, "[t]he salaries of coaches at Olympic

Reserve Schools were 30% higher than the average coach's salary." If salaries were higher overall at that school, that may demonstrate that the school conducted training at a higher level than the level at which most coaches operated. Still, the higher salary was not a function of the beneficiary's own recognition, but rather was apparently routine at the school. There is no indication that the beneficiary, as an individual, was singled out for a significantly high salary.

With regard to the very important issue of the extent to which the beneficiary's acclaim has been sustained, the petitioner has indicated that it pays the beneficiary a salary of $25,000 per year. The Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, page 129, indicates that "[m]edian annual earnings of coaches and scouts were $28,020 in 2000," placing the beneficiary's salary well below the median. Coaching jobs at schools and colleges have higher median earnings.

The petitioner submits further evidence regarding previously claimed criteria, but these materials tend overall to reinforce rather than overcome the director's preliminary findings. New letters, like the original letters, come from individuals who have held titles and ranks that exceed the beneficiary's own. In a similar vein, one of the beneficiary's former coaches indicates that the beneficiary "successfully competed with her team mates," among whom are an "Olympic Champion," a "World Champion" and a "National Champion," demonstrating that even on the beneficiary's own team there were several gymnasts whose accomplishments exceeded the beneficiary's own. The letter writers have taught or worked with the beneficiary in some capacity, and thus the letters are not evidence that the beneficiary has earned acclaim that extends beyond her own coaches, instructors, teammates and colleagues.

New evidence regarding the petitioner's work as a judge shows that the beneficiary has judged competitions at "the highest level" in Ukraine in 1997 and 1998. It remains, nevertheless, that the petitioner has not shown that the beneficiary continues to judge at such levels. In a newly submitted letter, Jennifer Shipman, the state judging director of the National Association of Women's Gymnastics Judges, discusses the beneficiary's certification as a level 5/6 judge and states that the beneficiary "intends to test to a higher level," which confirms the finding (above) that the beneficiary does not act as a judge at the top level of the sport, but rather at levels 5 and 6 of a 10-level sport. Ms. Shipman adds that the beneficiary "currently judges gymnastics competitions in Northern California," limiting the beneficiary's work to half of one state. Ms. Shipman lists competitions at which the beneficiary has acted as a judge, but she lists none that occurred before the petition's filing date. This supports the finding, above, that while the beneficiary was certified as a judge in the US, she had not yet actually acted as a judge at the time of filing.

The director denied the petition, discussing the various regulatory criteria and explaining the shortcomings of the petitioner's evidence regarding those criteria (for instance, determining that the gymnastics teams to which the beneficiary has belonged do not constitute associations in the field). The director determined that the petitioner had satisfied the criterion pertaining to work as a judge.

On appeal, counsel argues that the petitioner has in fact met the seven criteria claimed above. Counsel cites new evidence, never provided before the appeal, indicating that the title "Master of Sport of the USSR" is one of the "two top titles" in the Soviet classification system. A statistic

cited in source material indicates that, out of hundreds of thousands of gymnasts who attained some ranking under the USSR classification system, "as many as 600 have reached Master of Sport level." Six hundred, out of several hundred thousand, certainly represents only a tiny fraction of gymnasts in the USSR and thus the ranking has weight which was not made clear at the time of the director's decision. At the same time, we again emphasize that the beneficiary received this honor at the age of 13, several years before she even began coaching, and therefore the honor is not dispositive when considering the beneficiary's acclaim as a coach.

Counsel maintains that the petitioner placed first or second in national championships, citing the "Summary of Evidence" submitted with the appeal. The Summary of Evidence cites two exhibits, numbered 13 and 49, in support of the "national championships" claim. Exhibit 13 is the beneficiary's own resume and exhibit 49 is a letter from the beneficiary. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Regarding the beneficiary's work as a coach, counsel asserts that the director did not give sufficient weight to awards won by the beneficiary's students. The record, however, is highly ambiguous about the extent to which the beneficiary is responsible for those awards. Many witnesses say only that the beneficiary was involved in training those athletes, with no clear indication that the beneficiary was the principal coach for any of the athletes during the time immediately leading up to their awards. Furthermore, as noted above, there is no indication in the record that the beneficiary has continued coaching at a national or international level following her arrival in the United States. Even if the beneficiary was once regarded as being among Ukraine's top coaches, her reputation has not been sustained if, since 1999, she has been coaching at a lower level.

Counsel argues that membership in athletic teams can constitute membership in associations under 8 CFR 204.5(h)(3)(ii), or is at least comparable under 8 CFR 204.5(h)(4). While a defensible claim can be made in this regard under some circumstances, the record does not contain objective evidence that the teams to which the beneficiary belonged were the top teams in the USSR at the time. The beneficiary's membership in the Ukrainian National Team loses some weight when one considers that, while the beneficiary was a member, Ukraine was not a nation in its own right; it was a constituent of the USSR. Also, it remains that the beneficiary held these memberships as a gymnast rather than as a coach.

Counsel asserts that the distinction between an athlete and a coach "is artificial and not a result intended in the applicable statute." Athletic competition and coaching, even in the same sport, involve highly different skill sets and success in one does not automatically guarantee or imply comparable success in the other. By counsel's logic, a successful athlete who had never worked as a coach could claim extraordinary ability as a coach. An alien's success as an athlete certainly speaks to the alien's expertise in the particular sport, and it is worthy of consideration, but a former athlete who has been unable to coach consistently at the national or international level cannot be said to have sustained past acclaim as a competitive athlete. Furthermore, many of the beneficiary's honors pertain to "junior" competitions, and take on special significance only when one ignores that there are higher levels of competition (not least of all the Olympics) above the "junior" level. To

consider "junior" gymnastics to be a field apart from gymnastics is, if anything, far more "artificial" a distinction than the distinction between coaching an athlete and actually competing as an athlete.

Counsel maintains that the beneficiary has performed in a leading or critical role for distinguished institutions, but adds little to the discussion above pertaining to that subject. Serving on the faculty of an athletic school or training center is not inherently a leading or critical role, unless that phrase is defined so loosely that it could encompass almost every coach or instructor.

Counsel concludes by asserting that the beneficiary is "(1) a championship gymnast who also has (2) national team level coaching credentials as well as (3) national level judging credentials." The petitioner's coaching credentials have not been shown to represent the top of the field, and her judging credentials are demonstrably several levels short of the top of the field. The very fact that there are enough gymnastics coaches in the United States to justify a professional association – one with local subdivisions – indicates that coaching credentials do not automatically place one at the top of the field.

The petitioner has shown that the beneficiary was, as a teenager, a successful gymnast in her native Ukraine, who went on to work as a coach at important gymnastics schools. Simply serving on the faculty of such facilities, however, is not *prima facie* evidence of acclaim, and the petitioner has not persuasively shown through objective documentary evidence that the beneficiary distinguished herself from her colleagues while at those facilities. With regard to the two years that the beneficiary spent in the United States prior to the filing of the petition, the beneficiary works as a level 2-4 coach and a level 5/6 judge in a field of ten hierarchical levels, receiving a salary of $25,000 per year while conducting activities largely confined to northern California. The beneficiary's recent history does not reflect that she currently enjoys national acclaim in the country where she has worked since 1999, and thus any prior acclaim has not been sustained.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the beneficiary has distinguished herself as a coach to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.